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FILED
AUG 30 1943
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 308

COIT I. HUGHES, H. B. HUGHES, J. B. GOODSON, ET AL.,

Appellants,

vs.

J. L. GUST.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

FRED W. ROSENFELD,
HAROLD L. DIVELBESS,
J. L. GUST,
Counsel for Appellee.

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COIT I. HUGHES, H. B. HUGHES, J. M. GOODSON, FRANCES LOUNT, J. D. COLLINS, J. W. RAY, JULIA C. COLLINS, H. L. MOSHER, INDIVIDUALLY, AND H. L. MOSHER, AS TRUSTEE,

Appellants,

vs.

J. L. GUST.

APPELLEE'S STATEMENT SHOWING THAT SUPREME COURT OF THE UNITED STATES HAS NO JURISDICTION ON APPEAL.

This case is a suit to quiet title against numerous defendants (Abstract of Record, page 1-8). Many defendants defaulted. Those that answered were of two classes, (a) the County and City, which asserted certain old tax liens which plaintiff contested, and (b) certain individual defendants who claimed an interest in the property. (See opinion of Trial Judge, abstract of record, pages 105, 111). The Trial Judge found against both classes of defendants. His opinion points out that no Constitutional question is presented as to the individual defendants. The County and City which were affected by the Constitutional question did not appeal.

The individual defendants applied for an order permitting them to appeal without giving cost bond. This application was based upon the affidavit of defendant, H. L. Mosher, and was approved by the Trial Judge as to H. L. Mosher, individually, and as Trustee, and disapproved as to all other defendants (Abstract of Record 134, 135). Thereafter a purported Abstract of Record and Appellants' Brief was filed on behalf of the several defendants. The plaintiff thereupon filed a motion to dismiss the appeal as to the other defendants upon the ground that the appeal was ineffective as no bond had been filed and the application for order permitting appeal without bond had been disapproved as to said defendants by the Trial Judge. The plaintiff further filed a motion to affirm as to the defendant, H. L. Mosher, for the reason that she had made no attempt to file a proper Abstract of Record and that the assignments of error in her brief were insufficient. With these plaintiff submitted a brief citing former cases in the Supreme Court of Arizona showing that the motions were well taken. The defendants filed a reply brief joining issue on the motions of the plaintiff but making no request for permission to supply the deficiencies in their record. The Supreme Court granted both motions. The appellants thereupon filed a motion for rehearing and requested additional time in which to file authorities in support of their motion. The Supreme Court allowed the additional time and after the defendants had thus been given every opportunity, denied the motion for rehearing.

It is plain beyond question from the record that the only Constitutional question ever involved in the case affected only the defendants, County of Maricopa and City of Phoenix, which did not appeal from the judgment entered by the trial court and that there never was any issue

in the case involving any Constitutional question as to the defendants who appealed or attempted to appeal.

The decision of the case as to said defendants was based by the Trial Judge upon the interpretation of the local law and the decision by the Supreme Court consisted simply of dismissals of the appeal because of the failure of the defendants to comply with the statutes, rules and well established practice of the court with reference to appeals.

No Constitutional question is suggested in the petition for allowance of appeal to the Supreme Court of the United States except the fact that the appellee has not been compelled to pay taxes by reason of the failure of the County and City to appeal, which he ought to be required to pay. This, of course is not depriving the petitioners of property without due process or denying to them the equal protection of the law.

Respectfully submitted,

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MOTION TO DISMISS APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

Come now J. L. Gust, appellee in the appeal of the above-named petitioners to the Supreme Court of the United States, and moves that said appeal be dismissed for the reason that the same is wholly without merit because no Federal question of any kind was ever presented in said case and no such question is presented by the petition for allowance of appeal and the judgment in the Supreme Court of Arizona from which the appeal is taken is based wholly upon questions of local law and procedure over which the

Supreme Court of the United States has no power of revision.

Dated this 13th day of August, 1943.

FRED W. ROSENFELD,
HAROLD L. DIVELBESS,
J. L. GUST,
Attorneys for Appellee.

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